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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. (1)

In The
SUPREME COURT OF THE UNITED STATES

IN RE MARY LYNN COLLARD,
Defendant-Relator.

(from **STATE OF TEXAS v. COLLARD**)

ON PETITION FOR A WRIT OF MANDAMUS
TO THE MUNICIPAL COURT OF RECORD,
CITY OF RICHARDSON,
DALLAS COUNTY, TEXAS

FIRST AMENDED ORIGINAL PETITION FOR A WRIT OF MANDAMUS

WITH APPENDIX A

MARY LYNN COLLARD
1615 UNIVERSITY DRIVE
RICHARDSON, TEXAS 75081

Questions Presented for Mandamus

STATUTORY CHALLENGES

1. Does RICHARDSON, § 1-8 violate Due Process?
2. Does RICHARDSON, § 6-327 violate Due Process?
3. Does RICHARDSON, § 21-57 violate Due Process?
4. Does Art. 42.07 violate Due Process?
5. Are the relevant municipal ordinances legislative enactments?
6. Does GOV'T CODE § 25.0594(n) violate Separation of Powers or Due Process?
7. Does Art. 45.019 foster a horrific conflict of interest?
8. Does Art. 45.018(b) violate Due Process?

Examples of the Federal Questions to be protected

9. What meaningful Notice is due per Art. 45.018(b)?
10. Has Collard been denied a meaningful opportunity to be heard?
11. Did CITY/STATE wait too long to serve these "complaints?"
12. Did CITY/STATE wait too long to start trial?
13. Should the deferred disposition ever have been revoked?
14. Is Collard a "class of one?"

15. Has CITY/STATE violated the ADA by depriving Collard of her reading glasses?

16. Did NOAH ever have subject matter jurisdiction?

Mandamus

17. Does mandamus apply?

18. Is KIERCE's duty to prepare the Transcript for the accelerated Bond appeal clear and non-discretionary?

19. Is NOAH's duty to dismiss clear and non-discretionary?

20. May mandamus to the *municipal* court proceed without a ruling from the *county* appellate court?

Parties

The mandamus sought is directed to NOAH, with the Municipal Court of Record, City of Richardson, Texas, and/or to KIERCE, its Court Administrator, in the trial matters where the parties are as follows:

Municipal Court of (***public***) Record

RAYMOND D. NOAH ("judge")

KIMBERLY (KIM) KIERCE (Clerk, Court Administrator)

Parties Plaintiff

STATE OF TEXAS
CITY OF RICHARDSON, TEXAS

PETER G. ("PETE") SMITH,
JOE GORFIDA,
KAREN NELSON, [1]
with NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P. [2]

Party Defendant

MARY LYNN COLLARD

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[1] NELSON participated in the Fifth Circuit appeal, No. 06-10358, where (A) they obtained an extension of time by adding a name that then made no appearance in the Brief, leaving the Fifth Circuit out in the cold, and (B) they lost the Record on appeal, supplying a non-clerk-certified PACER printout, instead. Their Brief is a humdinger, too.

[2] <http://www.njdhs.com/about.php>.

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Petition for a Writ of Mandamus

Collard petitions for a writ of mandamus to the Municipal Court of Record as follows:

Citations to decisions below

None

Jurisdiction

(i) Date Orders Were Entered

- Original order triggering mandamus:
  "Collections" Show Cause entered 20 Sep 2007.
  Ten-day extension of 16 October.
- Supplemental Orders:

  Municipal Court—
  Post-judgment motion to dismiss denied 5 Nov.
  Motion for stay denied 5 Nov.
  County Criminal Court of Appeals—
  Petition for mandamus submitted 6 & 7 Nov.; case was never opened, or ruled on, by court.
  Motion for stay submitted 6 & 7 Nov.; case never opened, or ruled on, by court.
  State appellate court—
  Petition for mandamus to county appellate court to open case; denied 19 Dec. and again 4 Jan.
  State court of criminal appeals—
  Petition for mandamus, as supplemented, to county appellate court to open case; no ruling yet.

(ii) Extensions Yes, at least two.

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 1651(a).

(v) Regarding notice of statutory challenge, Rule 29.4(b)

28 U.S.C. § 2403(b) may apply.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

When Federal Questions Were Raised

When participation was first allowed.

Collard wasn't allowed access to the trial court until the day of trial. So, the federal questions were formally documented post-judgment.

In Removal by Next Friend.

Reference to several federal questions was made at various times throughout the proceedings, in particular during the time of Removal to federal court. [3]

Additional details in the related cases

In re Collard (No. 05-1445) (mand. denied).

Collard v. Texas (No. 06-733) (cert. denied).

Selective enforcement—5 issues; 2 years; 101 "tickets"

City cited Collard 101 times during a two-year period regarding five alleged problems. No "complaints" were served; no case was taken to trial. City simply wrote tickets. Collard knows of no other

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[3] STATE v. COLLARD, No. 3:06-CV-317-M (N.D. Tex. Dal. Div.) Filed 21 February. Remanded 28 February. No. 06-10358 (5th Cir.), cert. denied, No. 06-733. Key item learned: a **pleading** is not required.

case that even comes close to 101 "tickets."

State failed to give timely Notice—Art. 45.018(b)

- **13 Feb 2006**—traffic stop; arrest on warrants for 101 "housing code" "citations."
- **14 Feb**—first "arraignment."

This violated Art. 45.018(b) from the outset; the "complaint" must be served at least one day before "any proceeding." Collard didn't waive Notice or plead.

- **20 Feb**—delivery of "magistrate warnings" setting Bond.
- Same—second "arraignment."

This also violated Art. 45.018(b). The "magistrate warning" and order setting Bond is not a "complaint." Collard didn't waive Notice or plead.

- **23 Feb**—hearing on something about "financial status" as requested by State.

Nothing served. No waiver; no pleading.

- **1 Mar**—voir dire
- Same—***third*** "arraignment" and "trial."

"Complaints" delivered to Collard at start of trial proceeding. ***Third*** "arraignment" right there in front of the advisory panel at the start of trial. Collard *did* plead (Not Guilty) to all of the "*citations*." Even if such constitutes waiver for *that* proceeding, there are still at least two prior "proceedings" conducted in violation of Art. 45.018(b).

Denial of access to the trial court

<u>No access to the Record.</u>

- **17 Feb** (Fri.)—Collard asked for a copy of the Record. The Clerk indicated they'd get started on

it. *See* No. 06-733, Mot. Contempt, R.31.

- **20 Feb** (Mon.)—Collard asked again and was told she'd get no copies of the public Record without prior approval of State's AG's Office. *Id.* at 31-32.
- **27 Feb**—Letter requesting guidance *mailed* to Austin but *faxed* to one of the cc: recipients. *Id.* at 41-43.
- **1 Mar** (day of trial)—State delivered "complaints."

No reading glasses—flagrant violation of ADA.

As is the case with many, Collard can't read 12-point print without her glasses. She was denied her reading glasses during the entirety of her pre-trial incarceration. Even if paperwork *had* been delivered to her, meaningful participation was rendered impossible. No. 06-733, R.58-59.

Frozen out of pre-trial.

Between having no glasses, or pens, or paper, or anything but access to an exorbitantly priced phone line and the court's rocket-docket timing, Collard was completely frozen out of any meaningful pre-trial participation. No motions, no discovery, no preparation time. The Notice of Removal was activated using Next Friend capacity.

Conscience-shocking invasion of work product.

Since Collard's entire pre-trial had been prevented, under color, Collard's husband prepared a trial notebook for her. On the first effort to get that to her, City's attorney demanded access to it and full disclosure of its contents, as did NOAH (the "judge"). Rather than disclose the trial strategy, the notebook was not delivered to Collard. On the second effort, NOAH prohibited Collard from having "work

product" (NOAH's exact words). Both times, Collard was not permitted to have her trial notebook.

De facto denial of preparation of any defense.

Where the judge has pre-decided the guilt of the accused, the defendant doesn't need lawful Notice, access to the Record, glasses, meaningful participation in pre-trial, or even a trial notebook. That may work in Russia, China, or Nazi Germany, but the law of this state hasn't quite reached that level of "enlightenment." In the backwoods, barbaric place known as America, the accused is still supposed to have a meaningful opportunity to prepare a defense.

Disenfranchisement—residents v. inhabitants

The inhabitants organized the entity. RICHARDSON, § 1.01. But only residents may participate. RICHARDSON, § 4.04 (officers, voters, residents).

Undefined scope of Municipal Code—"citizen"

The term "citizen" is nowhere defined. *Cf.* U.S. CONST. amend. 14.

Flagrant conflict of interest—clerks as complainants

The municipal court's clerks serve both as (A) sworn "complainants" *and* as (B) custodians of those very same Records. No. 06-733, R.48-50. [4]

Undue delay

The "complaints" were *filed* in 2004, 2005, but not

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[4] What was served on 20 February were not the actual "complaints," but only the "magistrate warnings" with the Bond amounts. The "complaints" weren't served until 1 March, the day of trial.

served until the day of trial, 1 March 2006. That's too long. Art. 28.061.

Denial of right to allocute

□ **2 Mar**—denial of allocution

P R O C E E D I N G S [3]

(Tape 3-004-06, Side A)

[5] MS. COLLARD: -- go with the city of Richardson. Many people in the community have come forward --

THE COURT: Okay.

MS. COLLARD: -- to help, and that's who we wish to deal with. [6]

THE COURT: Here's what we'll do then. I think this will suffice.

For each of the citations that you have, your fine is going to be $200, including --

MS. COLLARD: Excuse me.

THE COURT: Excuse me. Excuse me, ma'am.

MS. COLLARD: I want to allocute.

THE COURT: I'm sorry?

MS. COLLARD: I want to allocute.

THE COURT: You want to what?

MS. COLLARD: Allocute.

THE COURT: What's that?

MS. COLLARD: Allocution.

THE COURT: You want allocution?

MS. COLLARD: Yes, sir.

THE COURT: What is allocution, ma'am?

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[5] Line numbers are omitted. Bold emphasis is added.

[6] Practically every segment of the "official" transcript starts well after the proceeding was underway. The issue here is whether City was going to compel agreements with City or allow Collard to choose contractors.

[4]

MS. COLLARD: It's what everybody gets before sentencing.

THE COURT: Everybody gets before what?

MS. COLLARD: Sentencing.

THE COURT: Well, we'll [we're?] just going to go forward. I don't know what allocution is. If you don't mind, let me finish.

Your fine on this is --

MS. COLLARD: Are you giving me --

THE COURT: Excuse me, ma'am.

MS. COLLARD: Are you giving me sentencing now?

THE COURT: Ma'am, do you want to be cited?

MS. COLLARD: No.

THE COURT: Be quiet until I finish your -- your sentence. Okay? Just be quiet until I deliver your sentence. [7]

Your fine will be -- look at me, please. You leave those people in the -- I'll clear the courtroom. Your attention is to be here, not to somebody back there in the audience. ...

Retaliation and denial of access to appellate court(s)

Deferred Disposition, appeal, retaliation, "judgment."

□ **2 Mar**—Deferred Disposition. No. 06-733, R.53.

This is appealable. Art. 102.071, et. seq. (convicted for purposes of costs); RICHARDSON, § 2-198(c)(3); *Dillehey*, 815 S.W.2d at 626 (regarding

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[7] *But cf.* Art. 42.07. Collard challenges Art. 42.07 as too restrictive.

deferred *adjudication*) (thus, see RICHARDSON, § 2-198(c)(2)).

The first step in the appellate process is the Motion for New Trial. GOV'T CODE § 30.00014(c). It must be filed within "10 days" (two calendar weeks) after the judgment to be appealed is rendered. *Id.*; RICHARDSON, § 2-189(c). Then, Bond is filed within "10 days" after that motion is denied. GOV'T CODE § 30.00015(a); RICHARDSON, § 2-190(a). Where a proposed Bond is disapproved, an updated Bond needs to be filed as directed. *See* Arts. 44.15, 44.16. [8]

There are three different lines of appeal, here: (1) the deferred disposition, (2) the final judgment, and (3) the Bond. As a brief look ahead, none of these appeals ever really started. Not one of them. Zero. Nada. Goose egg.

- **6 Mar**—Collard's Motion for New Trial and Motions to Dismiss. No. 06-733, R.57-84.
- Same—hearing set for 14 March.
- **13 Mar**—Collard's Analysis of the Charging Instruments, Speedy Trial Violation Notice, and Motion to Dismiss. No. 06-733, R.45-51.
- **14 Mar**—NOAH, not aware (?) of the 1991 rule change (15 years prior) allowing appeal of "deferred," threatened to violate Collard: if she wanted to appeal, he'd revoke the "deferred disposition" and enter a "final judgment." Sole basis for revocation?—Collard's Motion for New Trial regarding "deferred." **Key, no ruling was**

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[8] *See also* http://www.14thcoa.courts.state.tx.us/Case/Opinions/052500/990090f.PDF (unpublished dissent discusses legislative history); Art. 44.07 (right to appeal shall not be abridged).

entered on the Motion for New Trial. Not knowing instantly how to respond to NOAH's shocking and monstrous criminal conduct from the bench, Collard left to reflect on the options.

- Same—Collard filed formal DEMAND FOR RULING regarding her motion. No. 06-733, R.100-14. Formal assertion of criminal conduct by NOAH, among others. Service of DEMAND on law enforcement personnel.
- Same—Clerk's Notice of *sua sponte* extension to file motions for new trial regarding the two traffic cases. [9] No. 05-1445, App. A.
- **20 Mar**—First Supplemental Motion for New Trial and Motions to Dismiss regarding the two "traffic ticket" cases (responsive to *sua sponte* extension).
- **21 Mar**—Letter Notice of Orders (A) denying motion for new trial **and (B) revoking deferred disposition and entering Judgment, without any cause, reason, or basis other than Collard's having activated the appellate process for "deferred."** This letter refers to the 101 Ordinance matters, so it's an error to say that the related motion for new trial was filed on 20 March; that one was filed on 6 March and had the hearing on the 14th. *Cf.* next Letters, referring to 20 March motions for the "traffic ticket" matters. [10] No. 05-1445, App. A.
- Same—Letter Notice of Order denying motion for

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[9] Due date asserted, Fri., 24 March, counts 10 calendar days, which is too short; proper is on or about Tues. 28 March.

[10] Due date asserted, Fri., 31 March, counts 10 calendar days, which is too short; proper is on or about Tues., 4 April.

new trial, filed 20 March, regarding one of the "traffic ticket" matters. [11] No. 05-1445, App. A.

- Same—Letter Notice of Order denying motion for new trial, filed 20 March, regarding the other "traffic ticket" matter. [12] No. 05-1445, App. A.
- **24 Mar**—Collard's Confirmation of her Notice of Appeal—"Deferred Adjudication."
- Same—Collard's Motion for New Trial Regarding the Final Judgment(s) and Bond and her Motions to Dismiss.
- Same—Collard's Confirmation of her Notice of Appeal—"Final Judgment."
- Same—Collard's Confirmation of her Notice of Appeal—Bond.
- Same—Collard's Section 2-191 Instructions Regarding Appeal of the "Final Judgment."
- Same—Collard's Section 2-191 Instructions Regarding Appeal of Bond.
- **10 Apr**—Entry date of "order" signed 3 April that effectively denies access to the appellate court. [13] No. 05-1445, App. A.
- **12 Apr**—Collard's Confirmation of the Appellate Timetable (Subtitle: Even More Confirmation That NOAH Should Have Self-Recused)
- **18 Apr**—Collard's Appeal Bond, Versions 1 (Personal Recognizance) and 2 ($20,686) (both

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[11] Due date asserted, Fri., 31 March, counts 10 calendar days, which is too short; proper is on or about Tues., 4 April.

[12] Due date asserted, Fri., 31 March, counts 10 calendar days, which is too short; proper is on or about Tues., 4 April.

[13] They may be mutually exclusive provisions, but denial of the motion isn't necessarily the last word. *See* GOV'T CODE §§ 30.00020-30.00022.

designed to allow NOAH to renounce).

- **26 Apr**—Collard's Conditional Request for a Certificate of Right to Appeal
- **26 May**—DTPA Demand Letter sent to Fuller & Assocs. for failure to produce the full consolidated Record as contracted for. Tortious interference by municipal court personnel regarding content of Statement of Facts.
- **27 May**—Trial Record sent to county court of appeals.
- **7 Jul**—County court of appeals, without even opening a case on appeal, reviewed the Record, found no Bond that it considered suitable, and returned the case to the municipal court. Where there is not even a Case No., much less an order, Collard has nothing to appeal up to a higher court. The game that the municipal court was playing was this. Collard paid the $25 fee for the appeal, but the municipal court wanted $25 ***per case number***, or 103 x $25, **or $2,575**. Therefore, the municipal court prepared only one case for appeal, and there was no Bond submitted for just one case. Bottom line, the county court of appeals didn't want to touch it, which is understand-able, but without even a Case No., much less an order, Collard could appeal no farther. From one view, it's just one more layer of denial of access. From Collard's view, it was strong encouragement to renounce and to dismiss!

This is the sole mention of approval or disapproval of any Bond. No Case No.; no order; purely administrative.

- **21 Jul (2006)**—Collard's Appeal Bond—Versions

3 ($41,372) (detailed facts) and 4 ($41,372) (brief facts).

- **20 Sep (2007)**—NOAH's Show Cause "order," saying (A) that all appeals have been denied, and (B) that all fines for all offenses are now due and payable.

Accelerated Bond appeal never left muni. court!

Collard appealed the Bond. It's an accelerated appeal.[14] TEX. R. APP. P. 31. It was already late when No. 05-1445 was filed. The law doesn't matter; no one with that trial court had any intention of preparing a consolidated Transcript.

Denial of access is thematic

Thus, Collard was denied access to the Record of her own cases, a ***public*** Record, maintained in one of State's few and select municipal courts of (***public***) Record, from start (Notice of Removal) to finish (appeal of Bond).

Criminal enforcement of a purely commercial matter

Richardson embraces the Fourth Reich.

As illustrated in the Appendix, City has no problem with the idea of issuing dictatorial mandates—"thou shalt's." City also has no problem criminalizing the act of declining to kiss the jackboots, i.e., of "disobeying" the "thou shalt's." Since it's safe to presume that City ***has*** heard of Normandy (Omaha; Utah), it follows that City spits on a LOT of graves!

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[14] The clerk must send the clerk's record and the court reporter must send the reporter's record to the appellate court within 15 days after the notice of appeal is filed (matures, takes effect). TEX. R. APP. P. 31.1.

This is a purely commercial matter ...

A "thou shalt" might very well be or become part of an enforceable commercial agreement. [15] *Mandamus* may exist. But ***criminalizing*** the act of not complying with a "thou shalt," outside the context of a fiduciary obligation, rather screamingly violates the entire point of the criminal system. So, (A) where's a valid trust agreement (no such thing was offered into evidence)? or (B) where's the ***prohibited*** conduct (no such thing in these ordinances)? *Cf. Carhart* (citing *Grayned*, 408 U.S. at 108).

... therefore, no municipal court has jurisdiction.

Municipal courts (of (***public***) Record) have jurisdiction over criminal matters only. GOV'T CODE §§ 29.003, 30.00005 (option to include civil); RICHARDSON, § 2-180 (civil option not activated).

No evidence of any "prohibited" conduct.

Four of the five areas are "thou shalt" matters. One, however, namely fence construction without a permit, at least reads as a "thou shalt not." RICHARDSON, § 6-201. But, even if it were humanly conceivable to ***criminalize*** putting up or working on a fence on one's own property, there's still ***no evidence*** that Collard, at any time, ever, in the entirety of the relevant time period, or before that time period, or even to this very day, did any fence construction of any type, kind, or nature, ***with or without*** any permit! [16] Thus, that one is nothing but

---

[15] Not here, though, due to adhesion. *See* RICHARDSON, § 21-57.

[16] There are two ways to address this. One involves a Stay at least long enough to allow State to respond (with silence, for

a malicious prosecution from the outset, as well.

Collard jailed 18 days, and for what?

Since the reason(s) for the arrest were the 101 "housing code" "citation" ***warrants***, Collard wasn't merely threatened with criminal sanctions in City's effort to attempt to collect on a commercial matter. She was kidnapped, held for ransom, extorted from via use of the mail, maliciously prosecuted, denied access to the courts, and violated in her rights of property and liberty, generally, all by a "judge" that never had the jurisdiction he thought he had.

Post-judgment motion to dismiss and accompanying motion for stay

Collard filed her post-judgment motions to dismiss and for stay on 29 Oct. in the municipal court of (***public***) Record. The document containing both motions consists of 22 Points and is 47 pages, including Table of Contents and Table of Authorities. Notice for hearing was dated 1 Nov. Hearing was held on 5 Nov., and NOAH denied both motions. Perhaps some people just read very quickly.

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there is no evidence). That's the time and cost efficient process. Alternatively, where a full Statement of Facts may be needed in order to verify this "no evidence" point, what Collard has is in 8.5x11, but booklet format can certainly be produced. Since State, through its officers and agents, has gone to so much trouble to prevent the review of this matter in the normal course, Collard has no problem considering that, alone, as proof of her "no evidence" position. In short, even if Notice is somehow rendered irrelevant, and if denial of access, both at trial and on appeal, is somehow rendered irrelevant, thus, that jurisdiction existed in a municipal court for those "charges," those charges should be dismissed due to "no evidence."

Mandamus/stay and the state appellate courts

County appellate court refuses to file/open case.

Collard submitted her petition for mandamus and her motion for stay to the county criminal court of appeals in person on 6 Nov. The clerk refused to file it. Collard then mailed it that same day. Her petition, verified on 4 Nov., consists of 25 Points and is 68 pages, including Table of Contents, Index of Authorities, and listing of the contents of the Appendix. The Appendix consists of 20 documents, including prior rulings and first pages of relevant appellate time-table motions, and another document containing the relevant statutes and ordinances of focus, a total of 42 pages. The complete petition is 110 pages. The motion for stay is three pages. Neither the mandamus nor the stay has even been filed as of the date this supplement is being printed.

State appellate court files/opens case, twice!

The state appellate court (1) acted according to law, TEX. R. APP. P. 52.1, but (2) hasn't made the *county* **appellate (*not trial*)** court do the same. On the one hand, upon submission of the mandamus petition, the state appellate court filed the petition and opened a case. On the other, in No. 05-07-*01613*-CV, they subtly suggest that this case raises an issue of first impression. Even if that ***were*** basis to deny ***this*** mandamus, ***they refused to address the issue!*** Thus, it's ***still*** an issue of first impression!

That was the ***first*** panel. The **second** panel completely missed the boat by subtly suggesting that Collard needed to present an order to be reviewed via mandamus. *See* No. 05-07-*01760*-CV.

Court of criminal appeals files/opens case.

Compelled to do so, Collard filed a mandamus with the court of criminal appeals. If *01613* is right, there won't be any mandamus to the county court; if mandamus follows, a ***filing*** is still not a **ruling**!

(Unsigned?) Warrant for arrest issued

The municipal court ***now*** demands Collard pay more than $28,000, immediately, or else go to jail. But no warrant Notice delivered to Collard is signed.

Argument

STATUTORY CHALLENGES

1. Does RICHARDSON, § 1-8 violate Due Process?

RICHARDSON, § 1-8(a)(1) looks to ***prohibitions***. This is *consistent* with *Carhart* (*Grayned*).

However §§ 1-8(a)(2) and (3) criminalize an alleged failure to comply with the equivalent of a ***legislative mandate***. There is no definition of any ***prohibited*** conduct. "Do what we tell you to do, or go to jail!" This is flagrantly ***in***consistent with *Carhart*.

2. Does RICHARDSON, § 6-327 violate Due Process?

Since RICHARDSON, § 6-327(a) incorporates § 1-8, § 6-327 also violates Due Process. *Carhart*.

3. Does RICHARDSON, § 21-57 violate Due Process?

The Statement of Facts includes voir dire about

"home owners associations." There is no known agreement signed by Collard regarding any such association, and none was introduced into evidence. Therefore, if that concept applies, at all, it'll be because someone thinks that participation in a "home owners association" can be legislatively mandated, i.e., that RICHARDSON, § 21-57 is valid.

No compelled agreement is valid. *Burger King*, 471 U.S. at 486. *Cf.* Social Security cannot be compelled; use of "funny money" cannot be compelled; wills cannot be compelled; *see* 1 PAGE, THE LAW OF WILLS §§ 5.7, 15.11; trusts cannot be compelled; BOGERT & BOGERT, THE LAW OF TRUSTS AND TRUSTEES §§ 42 at 434, 44 at 452 and n.16; commercial agreements cannot be compelled; *see* UCC, typically § 1-103 (regarding the defense of undue influence). *See also Felter* (recognizing a statutory right to be free from compelled consent regarding an agreement). In sum, no evidence of any type, kind, or nature, is relevant *or* competent where there's compelled consent. *See Escobedo v. Illinois* and *Miranda*.

Thus, § 21-57 is facially void as violating public policy.

4. Does Art. 42.07 violate Due Process?

The entire point of allocution is to raise ***all*** reasons why sentencing should not proceed. The instant all legal remedies have been exhausted, the doors to equity fly wide open. To limit that discussion at that time multiplies the proceeding by compelling an appeal that might not otherwise be needed.

Thus, Art. 42.07 is unduly restrictive.

5. Are the relevant municipal ordinances legislative enactments?

Where's the legislature?

See Bass, 404 U.S. at 347-48 (rule of lenity—(1) common language (2) legislatively enacted). Since there is no lawful legislative enactment, here, these ordinances violate Equal Protection and Due Process.

Disenfranchisement.

ENTIRE MUNICIPAL LEGISLATIVE PROCESS IS FLAWED.

The "incorporation" provisions in the Municipal Code, City of Richardson, state that the inhabitants comprise the body politic. *See* RICHARDSON, § 1.01. However, only residents are allowed (1) to vote and (2) to hold (legislative, etc.) office. *See e.g.* RICHARDSON, § 4.04 (officers, voters, residents). This instantly amounts to "taxation without representation," among other non-representation problems, which renders the entire Municipal Code for City of Richardson invalid on its face.

Where the inhabitants are facially excluded, as an entire class, then, if the process, here, is legislative at all, it is entirely defeated, meaning that there is not one word of the Municipal Code, City of Richardson, that provides Notice of any proscribed conduct. *Cf. Carhart* (citing *Grayned*, 408 U.S. at 108).

6. Does GOV'T CODE § 25.0594(n) violate Separation of Powers or Due Process?

Depriving appellate court of inherent authority.

In the event Texas is not the only jurisdiction dealing with this, it may be valuable to address this statute. GOV'T CODE § 25.0594(n) says this:

(n) Sections 25.0003(a) and (c) do not apply to a county criminal court of appeals in Dallas County.

By depriving this appellate court, generally, of its civil authority, this language appears to deprive the court of its mandamus authority, in particular.

No legislature may deprive an appellate court of that court's inherent authority to protect its appellate authority. Therefore, this statute appears to violate Separation of Powers and Due Process.

Another view—presumption of validity.

Presuming the statute valid, and reading it in a way that would render it valid, another way to read this limitation comes from understanding that the general language for county courts grants them both civil and criminal jurisdiction. GOV'T CODE § 25.0003(a), (c). Therefore, if the purpose of § 25.0594(n) is to distinguish civil from criminal, then the statute, as so construed, accomplishes that purpose, in a rather cryptic and confusing manner.

GOV'T CODE § 25.0004(a) supports the conclusion that, despite § 25.0594(n), the county criminal court of appeals *has* mandamus authority.

Another view—nature of the cases.

Another way the statute might be just fine *and* the county criminal appellate court still *not* have jurisdiction to address mandamus is where the underlying case is simply not a criminal case. The one case originally prepped by the municipal court for appeal was one of the housing code cases, namely N101355A. The *county* court of appeals never opened a case and simply returned the "Record" to the municipal court, making reference to the Bond.

7. Does Art. 45.019 foster a horrific conflict of interest?

Clerks as verify-ers.

Art. 45.019 allows the clerks to ***verify*** complaints.

(e) A complaint in municipal court may be sworn to before:

(1) the municipal judge;
(2) the clerk of the court or a deputy clerk;
(3) the city secretary; or
(4) the city attorney or a deputy city attorney.

Art. 45.019(e)(2).

Clerks as complain-ers.

It does not authorize the clerks also to ***be a/the hearsay complainant***. There's nothing about Art. 45.019 that even remotely contemplates that the clerks will also serve as ***non-witness*** complainants.

Where the complainant is also a custodian of the ***public*** Record, there arises a rather blatant conflict. All cases in which clerks are both custodians of Record and ***non-witness*** complainants should be dismissed on their face. In the future, verifying and complaining should be strictly separated, or screened (as is done within large organizations to avoid conflict/privilege issues). Otherwise, this statute needs to be modified to prevent the temptation of doing both the verifying and the complaining.

8. Does Art. 45.018(b) violate Due Process?

The statute, itself.

Art. 45.018. Complaint [Municipal Court]

(a) For purposes of this chapter, a ***complaint*** is a sworn allegation charging the accused with the

commission of an offense.

(b) ***A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding*** in the prosecution of the defendant under the ***complaint***. The defendant may waive the right to notice granted by this subsection.

Art. 45.018 (emphasis added).

If read literally, this purports to dispense with Notice altogether. How does anyone plead to a "complaint" unless and until that "complaint" is both filed and served? Obviously, a party may waive Notice, at least the timing aspect. But, where the party does not waive Notice, in any aspect, this language appears to allow "no Notice," anyway, at least in terms of timing.

Application of the statute.

If the statute is not the problem, then the focus becomes the application of it. Where there is no waiver, and where the statute requires both filing and serving timely the "complaint," then the widespread practice defies the statute. Key in the application here is whether an "arraignment" constitutes "any proceeding." Per Art. 45.0215(a), which deals with cases against minors, there's no question that the "arraignment" is a "proceeding" for purposes of Art. 45.018(b). Thus, where there's (A) an "arraignment," (B) no waiver of Notice, which waiver surely has to be "of Record," somehow, and best is "in writing," whether it's a court "of Record" or not, *cf.* TEX. R. CIV. EVID. 509 (physician-patient *privilege* can't be waived without signed writing), and (C) no timely service of a filed "complaint" prior to

that "arraignment," then there is no Notice, thus a void judgment. *Harris*, 55 U.S. at 339 (cited in *Commercial Equip.*, 678 S.W.2d at 918; *Milliken*; *Peralta*; *Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation.").

Examples of the Federal Questions to be protected

9. What meaningful Notice is due per Art. 45.018(b)?

Does the "complaint" have to be served?

See Art. 45.018(b). *See also Murphy Bros., Inc.*; *Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."). All that was served on Collard was "notice" that a "complaint" existed. That came via the "magistrate warning" that included a setting of (pre-trial) Bond.

That is one way to read Art. 45.018(b). But, where "notice of a complaint" *doesn't* mean "the actual complaint, itself," then where's the Notice? Not one of the "magistrate warnings" even identifies a statute allegedly violated, much less how. [Hypothetically:] "A criminal charge has been filed against you. How do you plead?" "To what?" "To the criminal charge?" "What ***is*** the charge?" "Do you want to be charged with contempt, too?" "No." "Then, how do you plead?" "To what?" "OK! You're now cited for contempt! You sit in jail until you decide how you're going to plead!"

If "complaints" don't ever have to be served, then why did State even bother delivering them on the day of trial? If the "ticket" is sufficient, or if the "magistrate warning" is sufficient, then why *ever* serve the "complaint?"

In other words, the system cannot willfully and blatantly run roughshod over its own rules in manifest bad faith. Therefore, since it's clear that the "complaint" must be served, the focus is simply a matter of timing.

Is an "arraignment" "any proceeding?"

Why serve the "complaint?" *Meaningful* Notice; *meaningful* opportunity to be heard. *Milliken* (Notice, opportunity to be heard, fair play, substantial justice); *Int'l Shoe* (Notice, opportunity to be heard); *Mullane* (Notice, opportunity to be heard); *Armstrong*, 380 U.S. at 552 (Notice, meaningful time, meaningful manner); *Sniadach* (Notice, opportunity to be heard); *Fuentes v. Shevin* (Notice, meaningful time); *N. Ga. Finishing* (Notice, opportunity to be heard, even for corporations (i.e., the shareholders)); *Burns* (Notice, opportunity to be heard, on upward departure); *Hamdi* (denial of access and of opportunity to be heard); *Jones* (Notice, opportunity to be heard).

Where the "complaint" has to be served, not a "ticket," not a "magistrate warning," but the "complaint," itself, then it's impossible to say that State ever gave Collard Notice of anything at least "the day before" any relevant proceeding.

Since the "complaints" weren't served until the day of trial, NOAH's *first* "arraignment," NOAH's *second* "arraignment," and even NOAH's ***third*** "arraignment," right there in front of the panel, were ***all*** conducted in violation of Art. 45.018(b). Collard received copies of the "complaints," some of which had been filed two years prior, at trial.

So, State willfully never complied with Art. 45.018(b).

What constitutes waiver?

Obviously, Notice may be waived. Entering a plea without demanding delivery of the "complaint" reasonably constitutes waiver. Entering a plea without demanding timely delivery of the "complaint" might also.

NOAH conducted two "arraignments" during Collard's 17-day (pre-trial) incarceration. Is that excused where Collard enters pleas at trial, i.e., at the ***third*** "arraignment," and not to any "complaints" but only to the "citations?" Did Collard waive Notice nunc pro tunc by pleading at that ***third*** "arraignment?" How many swings at the piñata does a court get? *Cf. Ohralik* (limiting "in person" solicitation; thus, limiting duress, coercion, and undue influence as engaged in by the legal profession). Does that horse really go back into that barn? Is there no "bank robbery" where the "money" is returned?

10. Has Collard been denied a meaningful opportunity to be heard?

No access to the court—*Boddie* in berserk extreme.

Boddie (denial of access to the court). No glasses. No pre-trial motions or discovery. No Record for trial. No trial notebook—horrific, conscience-shocking violation of *Hickman v. Taylor*. Total prevention of preparation of any defense. No allocution allowed, under threat of "citation" ("contempt"). Retaliation for appealing the "deferred disposition," via revocation of "deferred" without one ounce of justification and entering "final judgment." No Record for ***any*** of the three lines of appeal,

especially the accelerated Bond appeal. Then, the county court of appeals never even opened a case or entered any ruling but just made an oblique reference to Bond in a letter and sent it all back to the municipal court.

11. Did CITY/STATE wait too long to serve these "complaints?"

What process is due? The complaints were *filed* in 2004, 2005, but not *served* until the day of trial, 1 March 2006. That's too long. Art. 28.061.

12. Did CITY/STATE wait too long to start trial?

What process is due? CITY/STATE arrested Collard on 13 Feb., but didn't start trial until 1 March. Art. 17.151 § 1(4) allows only **five days** (effectively one calendar week) between the arrest and the trial where the accused is incarcerated the entire time. Thus, **17 days** is too long.

13. Should the deferred disposition ever have been revoked?

What process is due? The ***sole*** reason NOAH revoked the deferred disposition was Collard's appeal of that ruling. Retaliation is not a ***lawful*** reason to revoke "deferred" or to enter "judgment."

14. Is Collard a "class of one?"

Equal Protection—Irrational governmental activity.

See Village of Willowbrook ("class of one" fully recognized where intentional, irrational, reproducible governmental action is involved).

15. Has CITY/STATE violated the ADA by depriving Collard of her reading glasses?

As is the case with many, Collard can see just fine, but can't read without her glasses. NOAH never allowed her to have them until trial. In addition to denial of access, this may violate the ADA.

16. Did NOAH ever have subject matter jurisdiction?

Failure in the institution of the prosecution.

Highly selective enforcement. No Notice. No opportunity to be heard. Denial of access. Malicious prosecution.

Incompetent statutes.

All of the statutes address what is, at best, a purely ***commercial*** matter. City's "complaints" may be filed in a court of ***civil*** jurisdiction, not of "criminal only" jurisdiction.

The one statute that even pretends to ***prohibit*** something (no fence construction without a permit) has **no evidence** to support the charge. But, even if the evidence existed, it's difficult to see the commercial nexus justifying a *criminal* charge. So, even if the analysis survived the failure in the institution of the prosecution, this one would still be a jurisdictional question, not merely a matter of proving a defense, *see Dixon*, which NOAH totally prevented Collard from doing.

The other statutes ***prohibit*** nothing, which renders them void for purposes of criminal enforcement. *Cf. Carhart.*

Mandamus

17. Does mandamus apply?

No alternative avenue of relief.

Reviewing *Kerr*, 426 U.S. at 403, Collard is satisfied that no other alternative exists. By reciting that "All appeals have been denied," knowing full good and well that they never got out of the starting gate, NOAH confirms his intent ***to prevent*** all appeals. To be sure, it's not that Collard hasn't bent over backwards, double, fourteen ways from Sunday, to activate the appellate process. Thus, it's not that the appellate process isn't theoretically available. It's that she's been thwarted, opposed, even violated, at every turn. Thus, it's manifest misstatement of fact to say, "All appeals have been denied." What's true and correct is that all Collard's "***efforts at appeal***" have been denied and rejected and even abused.

So, this isn't a *substitute* for appeal. It's the blasting cap for it. If appeal is even still available, it's going to take a mandamus to serve as the super-hydraulics-driven, diamond-tipped, down-hole drill bit to crack the granite encasement in which NOAH has buried this entire appellate effort, "with a little help from his friends," of course.

Clear and indisputable.

It's interesting that it's easier to obtain an arrest warrant than a mandamus! Maybe it should be that way, but it is a fascinating contrast in this fact pattern. Collard was arrested because someone thought some wood needed some paint, but to convince an appellate Court to exercise mandamus requires Collard to establish a "clear and

indisputable" position. Seems backwards, somehow, but here we are.

Collard is satisfied that the verified facts in this petition and in all the available Records, all of which are subject to Judicial Notice, more than satisfy the "clear and indisputable" element. State's silence in response will more than confirm this, as well.

Discretionary determination of appropriateness.

If this is a "blood pressure" test or a "smell" test, Collard is confident that the facts in this case more than suffice.

18. Is KIERCE's duty to prepare the Transcript for the accelerated Bond appeal clear and non-discretionary?

Collard sure reads it that way! *See* TEX. R. APP. P. 31.1. Resolution of the Bond amount issue would substantially encourage NOAH at least to address the Bond issue, if not also assuage the county court of appeal's concerns.

19. Is NOAH's duty to dismiss clear and non-discretionary?

Clean hands doctrine—abuse of discretion.

As a place to start, regardless of the validity of the issues for the appeal, while Collard isn't trying to promote dismissal out of the trial court as a substitute for the appeal, where the trial court goes to ***so much*** trouble to prevent the appeal, mandated dismissal seems fully in order. Per a "clean hands" doctrine analogy, City/State cannot be heard to benefit from its manifest bad faith and lawlessness in the matter. If this is the example of how State

encourages its agents to treat people, State should be dismissed out in every case of this type that exists. *Cf. Ex Parte Fahey* (mandamus is reserved for the extreme cases); *Will*, 389 U.S. at 95 (mandamus appropriate to address "usurpation of power"); *Bankers Life*, 346 U.S. at 383 (mandamus appropriate to address "clear abuse of discretion").

Fundamentally, per the statutory analysis alone, NOAH should have dismissed this one out before it ever got started. Instead, he drooled over getting to sign all those "magistrate warnings" with the Bond (money, money, money) amounts.

No crimes, thus no municipal court jurisdiction.

Either these matters are criminal or they aren't. A "home owners' association" dispute, if that's what this is, is a commercial, not a criminal, matter. Such matters have no business being filed in a court of "criminal case only" jurisdiction. Thus, dismissal here is non-discretionary.

No evidence of "prohibited" conduct.

There is **no evidence** of any violation of the only statute that even comes close to defining a ***prohibition***. Therefore, dismissal is non-discretionary.

20. May mandamus to the *municipal* court proceed without a ruling from the *county* appellate court?

Where the county appellate court refuses to act, what else can a frozen-out party do?

Remedies Requested

Collard requests

1. That this Court assert its supervisory authority in aid of its appellate jurisdiction, and, if time is needed for complete review, issue a Stay of any and all further proceedings in the Municipal Court of Record regarding these 103 matters, in particular the "hearing" set for 16 October (two weeks hence);
2. That this Court issue a writ of certiorari to the Municipal Court of Record in the event that confirmation of what is and what is not of Record, e.g., for the "no evidence" point, need be established in that manner;
3. That this Court allow her to submit any additional information or documents that the Court finds necessary;
4. That this Court give City/State and all interested parties the opportunity to respond to this verified petition, so that the shame of their silence may be heard from sea to shining sea;
5. That this Court supply supervisory guidance, and if necessary, issue a writ of mandamus;
6. That the guidance or mandamus encourage dismissal, or, if that's jumping too far ahead, then encourage preparation of the accelerated Bond appeal;
7. As much discussion on the issues presented and necessarily included as this case may allow;
8. The opportunity to brief any additional issues the Court may identify;

9. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;

10. That costs be taxed to NOAH, and then perhaps also to City and State, jointly and severally; and

11. Any and all other relief at law, in equity or sui generis to which she may show herself justly entitled.

Respectfully submitted,

/s/ Mary Lynn Collard
Mary Lynn Collard
I reserve all my rights
1615 University Drive
Richardson, Texas 75081

Verification

Per 28 U.S.C. § 1746, under the penalty of perjury, I, Mary Lynn Collard, depose and declare (or certify, verify or state), that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts stated in this First Amended Petition for a Writ of Mandamus are true and correct.

Further, Declarant sayeth not.

Executed on this the 8th of February, 2008

/s/ Mary Lynn Collard
Mary Lynn Collard, Declarant

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Appendix A

Rule 14.1(i)(i)—Appellate Opinion

Original appellate effort—None

No appellate case number; no order. Just the letter.

2006 July 7 Letter (appeal not even filed)

(SEAL OF THE COUNTY OF DALLAS STATE OF TEXAS)
DALLAS COUNTY
County Clerk
Cynthia Figueroa Calhoun

July 7, 2006

Richardson Municipal Court
P.O. Box 830978
Richardson, TX 75083-0978

RE: State of Texas vs. MARY LYNN COLLARD
Cause No. N101355A
FAILURE TO MAINTAIN BUILDING

Enclosed you will find a case that was sent to County Criminal Court of Appeals No. 1 to file as an appeal on a Court of Records case.

This case is unable to be filed because there isn't a correct appeal bond in the file.

If you have any questions, please contact me at (214) 653-5702.

SINCERELY,

/s/ Tania Robinson
TANIA ROBINSON
CHIEF CLERK
COUNTY CRIMINAL COURT OF APPEALS NO. 1

cc: Mary Lynn Collard

Frank Crowley Courts Building 133 N. Industrial Blvd. Dallas Texas 75207-4313 (214) 653-5700

Current mandamus effort—None

Rule 14.1(i)(ii)—Additional Orders

Municipal Court

2007 Sep 20—"Collections" Show Cause "order"

CAUSE NO. **(See Attachment A)** [1]

THE STATE OF TEXAS	§	IN THE
	§	MUNICIPAL COURT
VS.	§	FOR THE CITY OF
	§	RICHARDSON
MARY LYNN COLLARD	§	DALLAS COUNTY, TEXAS

NOTICE TO APPEAR

You, the Defendant named above, are hereby notified to personally appear before the Richardson Municipal Court located at 2100 East Campbell Road, Richardson, Texas 75081 for an Indigency and Show Cause Hearing on:

OCTOBER 16, 2007 at 8:00 A.M.

before said court regarding two (2) traffic violations and the City Ordinance Violations at 1615 University Dr as setout in Exhibit A attached hereto.

You are hereby notified that

1. All appeals have been denied,
2. **All fine(s) for all offenses are now due and payable,**
3. You must personally appear for the Hearing stated above,
4. At the Hearing set forth above, Judgment entered in your cases and time served credit will be reviewed as well as indigency status,

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[1] *See* No. 05-1445, App. A. Additional Essential Materials.

and

5. **Failure to Appear** for the Hearing will result in the issuance of a Capias Pro Fine Warrant for your arrest thereby incurring additional warrant fee per case.

ANY AND ALL MOTIONS must be filed in writing at least ten (10) days prior to the scheduled court date for consideration by the Municipal Judge.

WITNESS my official signature, this September 20, 2007

/s/ R D Noah
Presiding Judge, Richardson Municipal Court
City of Richardson, Dallas County, Texas

CERTIFICATE OF SERVICE

This document was served on the Defendant by mailing to Defendant's last known address on September 20, 2007.

/s/ Kim D Kierce
Court Clerk, Municipal Court
City of Richardson, Dallas County, Texas

(SEAL MUNICIPAL COURT RICHARDSON TEXAS)

Mary L Collard
1615 University Dr
Richardson, 75081 [2]

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[2] As such in the original.

2007 Oct 16—Extension, with threat of arrest

CAUSE NO. **(See Attachment A)** [3]

THE STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	FOR THE CITY OF RICHARDSON
MARY L COLLARD	§	DALLAS COUNTY, TEXAS

ORDER

The Defendant in the above numbered and entitled cause(s), having been FOUND GUILTY at Jury Trial for the offense of: **See Attachment A** is hereby ordered to pay the Judgment rendered in this matter as set forth below.

Total Fine and Cost Assessed $20,686
Payment Due Date October 26, 2007

Defendant is hereby advised that, pursuant to Sec. 51.921, Government Code, an additional $25.00 time-payment fee (per ease) will be added if the fine and cost assessed is not paid by the due date stated above.

Failure to pay the total amount stated above by the due date will result in additional fees and the issuance of a Capias Pro Fine WARRANT for the Defendant's arrest.

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[3] *See* No. 05-1445, App. A. Additional Essential Materials. The difference here is that each item has a judgment amount of $200.00, except for the "traffic" tickets, which are $283.00, each, for the total of $20,686, in this "order."

10-16-07 */s/ R D Noah*
Presiding Judge
Richardson Municipal Court

A true and correct copy of this Order was served on the Defendant by:

☐ Mailing to Defendant's last known address
☒ In person/hand delivery
☐ Mailing to Defendant's attorney of record [ ]

WITNESS my official signature, this *10-16-07*

/s/ Kim D Kierce
Court Clerk, Municipal Court
City of Richardson, Dallas County, Texas

Richardson Municipal Court (www.cor.net) P.O. Box 830978 Richardson, TX 75083-0978 phone: (972) 744-4500 fax: (972) 744-5800

2006 Mar 2—Deferred Disposition

See No. 05-1445, App. A.

2006 Mar 2—Extension Agreement (one traffic case)

See No. 05-1445, App. A.

2006 Mar 2—Application for Driver Safety Course (the other traffic case)

See No. 05-1445, App. A.

2006 Mar 14—Extensions of Time regarding traffic cases

See No. 05-1445, App. A.

2006 Mar 20 and 21—Rulings

See No. 05-1445, App. A. ("Housing Code" (101); Traffic (one); Traffic (the other)).

2006 Apr 10—Ruling denying mandamus

See No. 05-1445, App. A.

2007 Dec 18 *State* appellate court didn't order *county* appellate court to file/open case.

Order

Order issued December 18, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01613-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals [4] No. 1 [5]
Dallas County, Texas

ORDER

Before Justices Whittington, FitzGerald,
and Lang-Miers

Based on the Court's opinion of this date, we **DENY** relator's petition for writ of mandamus. We **ORDER** that relator Mary Lynn Collard bear the costs of this original proceeding

/s/ Mark Whittington
MARK WHITTINGTON
JUSTICE

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[4] [N.B. *But see* TEX. GOV'T CODE ANN. § 25.0591(c)(1) (County *Criminal* Court of Appeals, not County *Court* of Criminal Appeals). *MLC*]

[5] [N.B. No such court. TEX. GOV'T CODE § 25.0591(c)**(1)** creates "County Criminal Court of Appeals of Dallas County;" § 25.0591(c)**(2)**, "County Criminal Court of Appeals **No. 2** of Dallas County." (emphasis added). But, there is no County *Court* of Criminal Appeals of Dallas County of any "No.," and there is no County *Criminal* Court of Appeals **No. 1** of Dallas County. *See, infra*, p.A-31. *MLC*]

Opinion

Writ of Mandamus Denied; Opinion Issued December 18, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01613-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals No. 1
Dallas County, Texas

MEMORANDUM OPINION

Before Justices Whittington, FitzGerald,
and Lang-Miers
Opinion by Justice Whittington

Relator complains the trial judge [6] has not taken action on her mandamus petition or ruled on her "motion for stay." Based on the record presented, relator has not shown that she is entitled to relief. *See* TEX. R. APP. P. 52.8 (a): *State ex rel. Hill v. Court*

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[6] [N.B. ***trial*** judge? *Cf. e.g,* nn.1, 2, *supra. MLC*]

of Appeals for Fifth Dist., 34 S.W.3d 924, 927 (Tex. Crim. App. 2001). [7] Accordingly, relator's petition for mandamus is **DENIED**.

/s/ Mark Whittington
MARK WHITTINGTON
JUSTICE

071613F.P05

2008 Jan 4 *Second state* appellate panel's ruling on same petition.

Order

Order issued January 4 , 2008

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01760-CV

IN RE MARY LYNN COLLARD,
Relator

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[7] [N.B. This suggests that Collard has raised an issue of first impression. So, while mandamus may not follow, this ruling leaves the issue of first impression totally unresolved. *MLC*]

Original Proceeding from the
County Court of Criminal Appeals [8] No. 1 [9]
Dallas County, Texas

O R D E R

Before Justices Wright, O'Neill, and Lang

Based on the Court's opinion of this date, we **DENY** relator's petition for writ of mandamus. We **ORDER** that relator Mary Lynn Collard bear the costs of this original proceeding.

/s/ Carolyn Wright
CAROLYN WRIGHT
JUSTICE

Opinion

Writ of Mandamus Denied; Opinion Issued January 4, 2008

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

[8] [N.B. *See* n.1, *supra*. *MLC*]
[9] [N.B. *See* n.2, *supra*. *MLC*]

No. 05-07-01760-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals No. 1
Dallas County, Texas

MEMORANDUM OPINION

Before Justices Wright, O'Neill, and Lang
Opinion by Justice Wright

Relator complains the county court judge has not taken action on her mandamus or ruled on her motion for stay. Relator has failed to comply with the requirements for filing a petition for writ of mandamus. *See* TEX. R. APP. P. 52.3 and 52.7(a). [10] Accordingly, relator's petition for writ of mandamus is **DENIED**. *See* TEX. R. APP. P. 52.8 (a).

[10] [N.B. This suggests that Collard has to have an order from the *county* appellate court for the *state* appellate court to review, *see* TEX. R. APP. P. 52.3(j)(1)(A), in order that Collard seek relief for the county appellate court's refusal to abide by TEX. R. APP. P. 52.1. Thus, the first panel at least addressed the Point raised, while remarkably leaving open what they consider to be an issue of first impression. However, this second panel even more remarkably doesn't even come close to addressing the Point raised. *MLC*]

/s/ Carolyn Wright
CAROLYN WRIGHT
JUSTICE

2007 Dec 28 *State* court of criminal appeals files petition, opens case.

Postcard Notice of filing/opening case

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

RE: Writ No. WR-64,490-02
STYLE: COLLARD, MARY LYNN
TRIAL CT NO: [blank in original]
12/28/2007

I have this day received and presented to the Court the original application for writ of mandamus.

Louise Pearson, Clerk

MARY LYNN COLLARD
1615 UNIVERSITY DR.
Richardson, TX 75081

Pitney Bowes meter information:
0004236449 JAN 04 2008
MAILED FROM ZIP CODE 78701

Rule 14.1(i)(iii)—Rehearing, or other extension

Most recent—14 December

Rule 14.1(i)(iv)—Judgment of different date

Judgment(s) of 2006 Mar 20 and 21

See No. 05-1445, App. A.

Rule 14.1(i)(v)—Statutes and Rules

Richardson Municipal Code

All **bold** emphasis is added. *Italics* are in the original.

Nowhere defined—"citizen."

As was finally conspicuous around the time of the "14th Amendment," it matters that the term "citizen" be defined. This code doesn't define "citizen."

Sec. 1-9. Severability of parts of Code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the

valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the city council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.
(Code 1966, § 1-6)

Sec. 1-8. General penalty; continuing violations.

(a) In this section "violation of this Code" means:

(1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;

(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or

(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this Code shall be punished by a fine not exceeding $500.00, except that a fine not exceeding $2,000.00 shall be imposed for violation of provisions that govern fire safety, zoning, or public

health and sanitation, including dumping of refuse. The penalty imposed for a violation of this Code shall not exceed or be less than the penalty prescribed by state law for the same offense under state law. With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.

(d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(e) Violations of this Code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief or civil or quasi-judicial enforcement of a violation of this Code.

(Code 1966, § 1-5)

State law references: Penalties for ordinance violations, V.T.C.A., Local Government Code § 54.001 et seq.

Sec. 6-327. Penalty.

(a) Except as stated otherwise, violations of this article are punishable as provided in **section 1-8.**

(b) In addition to imposing a criminal penalty described in subsection (a) of this section, the city may, in accordance with V.T.C.A., Local Government Code ch. 54, subch. B [§ 54.011 et seq.], bring a civil action against a person violating a provision of this article. The civil action may include, but is not limited to, a suit to recover a civil penalty not to exceed $1,000.00 for each day or portion of a day during which the violation is continued or committed.

(c) The penalties provided for in subsections (a) and

(b) of this section are in addition to any other enforcement remedies that the city may have under city ordinances and state law.
(Code 1966, § 5-129)

See also **Sec. 6-326** (talks about "search warrants," thus the policy and intent to engage the criminal process).

Sec. 6-311. Definitions.

Occupant means any individual living or sleeping in a building, or having possession of a space within a building. (emphasis in original).

Owner means a person claiming, or in whom is vested, the ownership of, dominion over or title to real property, including but not limited to:
(1) A holder of fee simple title.
(2) The holder of a life estate.
(3) The holder of a leasehold estate for an initial term of five years or more.
(4) The buyer in a contract for deed.
(5) The mortgagee, receiver, executor or trustee in control of real property; but not including the holder of a leasehold estate or tenancy for initial term of less than five years.
(emphasis in original).

Sec. 6-356. Responsibilities of occupant.

An occupant shall be responsible for the following: ...
(9) Dispose of all his garbage and any other

organic waste which might provide food for rodents and all rubbish in a clean and sanitary manner by placing it in the garbage disposal facilities or garbage or rubbish storage containers.
(Code 1966, § 5-135)

Sec. 6-367. Structural standards.

An owner shall:

(1) Protect the exterior surfaces of a structure which are subject to decay by application of paint or other coating.

(18) Provide every exterior wall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain, or dampness to the interior portions of the walls or to the occupied spaces of the building. All siding material shall be kept in repair.

(20) Provide and maintain all portions, additions or sections of a roof including, but not limited to: fascia, eaves, soffit, sheathing, rafter tails, barge rafter, vent screening, gutters, downspouts, roof jacks and lead or metal flashing. They shall be complete with all trim strips, moldings, brackets, braces and supports in accordance with common building practices. No item shall display signs of deterioration, abuse or improper installation that could be construed to affect the purpose of that item or cause damage to the immediate area or roof structure, that could allow dampness or admit rain to the interior of that building.

(32) Provide that all exterior wood surfaces, other

than decay resistant woods, be protected from the elements and decay by painting or other protective covering or treatment. All siding shall be weather resistant and watertight. All masonry joints shall be sufficiently tuck pointed to insure water and air tightness.

(33) Provide and maintain garages, storage buildings and all other accessory structures in good repair and sound structural condition.

Sec. 6-201. Permit required.

It shall be unlawful for any person to construct a fence over 2 1/2 feet in height on any lot without having first obtained a fence permit therefor from the building inspection department. Adequate plans and specifications, as determined by the chief building official, must accompany each application for a permit.
(Code 1966, § 5-49)

Sec. 6-202. Inspection and maintenance.

When any fence is completed, it must be inspected. The building inspection department shall be notified upon completion of the fence. The chief building official will issue a card of acceptance if the fence complies with the provisions of this article, or it will be rejected. **All fences constructed under the provisions of this article shall be maintained so as to comply with the requirements of this article at all times. Fences shall be maintained by the owner or person in charge of the**

property in as near as possible the condition of such fence when installed and accepted as provided herein, and shall be maintained as follows:

(1) Such fence shall not be out of vertical alignment more than 20 percent.

(2) All damaged, removed or missing portions of such fence shall be replaced or repaired with comparable materials of a comparable color to the remaining portion of such fence.

(Code 1966, § 5-58; Ord. No. 3285-A, § 1, 5-8-00)

Sec. 21-57. Mandatory property owners' association.

(a) When a subdivision contains streets, sewers, sewage treatment facilities, water supply systems, drainage systems or structures, parks, landscaping systems or features, irrigation systems, screening walls, living screens, buffering systems, subdivision entryway features (including monuments or other signage), or other physical facilities or grounds held in common that are not to be maintained by the city, the city may require the establishment and creation of a mandatory property owners' association to assume and be responsible for the continuous and perpetual operation, maintenance and supervision of such facilities or grounds.

(b) The city is not responsible for enforcing any private deed restrictions or for the supervision of any property owners' association.

(c) A property owners' association shall be established and created to assume and be responsible

for the continuous and perpetual operation, maintenance and supervision of landscape systems, features or elements located in parkways, common areas between screening walls or living screens and adjacent curbs or street pavement edges, areas adjacent to drainage ways or drainage structures or at subdivision entryways, open space, common areas or properties including but not limited to: landscape features and irrigation systems, subdivision entryway features and monuments, private amenity center, playgrounds, pavilions, ponds, detention ponds, off-street parking for a private amenity center, swimming pool, exercise trail, private neighborhood park and related amenities. Subdivision entryway treatments or features shall not be allowed unless a mandatory property owners' association as required herein is established and created.

(d) All open space and common properties or areas, facilities, structures, improvements, systems, or other property that are to be operated, maintained and/or supervised by the property owners' association shall be dedicated by easement or deeded in fee simple ownership interest to the property owners association after construction and installation as applicable by the owner and shall be clearly identified on the record final plat of the property.

(e) A copy of the agreements, covenants and restrictions establishing and creating the property owners' association must be approved by the city attorney prior to the approval of the final plat of the subdivision and must be filed of record with said final plat in the plat records of the county. The plat shall clearly identify all common areas or grounds

that are to be operated, maintained and/or supervised by the property owners' association.

(f) At a minimum, the agreements, covenants and restrictions establishing and creating the property owners' association required herein shall contain and/or provide for the following:

(1) Definitions of terms contained therein;

(2) Provisions acceptable to the city attorney for the establishment and organization of the mandatory property owners' association and the adoption of bylaws for said property owners' association, including provisions requiring that the owner(s) of any lot or lots within the applicable subdivision and any successive purchaser(s) shall automatically and mandatorily become a member of the property owners' association;

(3) The initial term of the agreement, covenants and restrictions establishing and creating the property owners' association shall be for a 25-year period and shall automatically renew for successive ten-year periods, and the property owners' association may not be dissolved without the prior written consent of the city;

(4) Provisions acceptable to the city attorney to ensure the continuous and perpetual use, operation, maintenance and/or supervision of all facilities, structures, improvements, systems, open space or common areas that are the responsibility of the property owners' association and to establish a reserve fund for such purposes;

(5) Provisions prohibiting the amendment of any portion of the property owners' association's agreements, covenants or restrictions pertaining to

the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, area or grounds that are the responsibility of the property owners' association without the prior written consent of the city;

(6) The right and ability of the city or its lawful agents, after due notice to the property owners' association, to maintain the common areas, to remove any landscape systems, features or elements that cease to be maintained by the property owners' association; to perform the responsibilities of the property owners' association and its board of directors if the property owners' association fails to do so in compliance with any provisions of the agreements, covenants or restrictions of the property owners' association or of any applicable city codes or regulations; to assess the property owners' association for all costs incurred by the city in performing said responsibilities if the property owners' association fails to do so; and/or to avail itself of any other enforcement actions available to the city pursuant to state law or city codes or regulations; and

(7) Provisions indemnifying and holding the city harmless from any and all costs, expenses, suits, demands, liabilities or damages including attorney fees and costs of suit, incurred or resulting from the city's maintenance of the common areas and/or removal of any landscape systems, features or elements that cease to be maintained by the property owners' association.

(g) Builders are required to post notice in a prominent place in all model homes and sales offices

stating that a property owners' association has been established and membership is mandatory for all property owners. The notice shall state at a minimum that the builder shall provide any person upon their request the association documents and a five-year projection of dues, income and association expenses.

(h) Prior to the transfer of the control of the property owners' association to the lot owners, the developer must provide a reserve fund equivalent to two months' dues based on full property owners' association membership.

(i) Concurrent with the transfer of the property owners' association, the developer must transfer to the property owners' association control over all utilities related to property and amenities to be owned by the property owners' association. The developer must also disclose to the property owners' association the total cost to date related to the operation and maintenance of common property and amenities.

(Ord. No. 3599, § 1, 3-26-07)

TEX. CRIM. PROC. CODE. ANN.

Art. 42.07. [773] [860-861] Reasons to Prevent Sentence.

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. **The only reasons which can be shown, on account of which sentence cannot be pronounced, are:**

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is incompetent to stand trial; and if evidence be shown to support a finding of incompetency to stand trial, no sentence shall be pronounced, and the court shall proceed under Chapter 46B; and

3. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury, or before the court if a jury is waived, as to his identity.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1975, 64th Leg., p. 1102, ch. 415, Sec. 3, eff. June 19, 1975. Amended by Acts 1981, 67th Leg., p. 810, ch. 291, Sec. 115, eff. Sept. 1, 1981; Acts 2003, 78th Leg., ch. 35, Sec. 3, eff. Jan. 1, 2004.

Art. 42.07 (West 2005) (emphasis added).

Art. 45.018. Complaint [Municipal Court]

(a) For purposes of this chapter, a ***complaint*** is a sworn allegation charging the accused with the commission of an offense.

(b) ***A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding*** in the prosecution of the defendant under the ***complaint***.

The defendant may waive the right to notice granted by this subsection.

Art. 45.018 (West Supp. 2004-2005).

Art. 45.0215. Plea by Minor and Appearance of Parent

(a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; ***and***

(B) ***all <u>other</u> proceedings*** relating to the case.

Art. 45.0215(a) (West Supp. 2004-2005) (emphasis added) (not directly applicable, here, but this clearly illustrates and confirms the fact that the "arraignment" is a "proceeding" for purposes of Art. 45.018(b)).

Art. 17.151. RELEASE BECAUSE OF DELAY.

Sec. 1. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

(1) 90 days from the commencement of his detention if he is accused of a felony;

(2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;

(3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

Sec. 2. The provisions of this article do not apply to a defendant who is:

(1) serving a sentence of imprisonment for another offense while the defendant is serving that sentence;

(2) being detained pending trial of another accusation against the defendant as to which the applicable period has not yet elapsed;

(3) incompetent to stand trial, during the period of the defendant's incompetence; or

(4) being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community under this article.

Sec. 3. Repealed by Acts 2005, 79th Leg., ch. 110, Sec. 2.
Added by Acts 1977, 65th Leg., p. 1972, ch. 787, Sec. 2, eff. July 1, 1978.

Sec. 2 amended by Acts 2005, 79th Leg., ch. 110, Sec. 1, eff. Sept. 1, 2005; Sec. 3 repealed by Acts 2005, 79th Leg., ch. 110, Sec. 2, eff. Sept. 1, 2005.

Texas Government Code

§ 25.0591

(c) Dallas County has the following county criminal courts of appeals:

(1) County Criminal Court of Appeals of Dallas County, Texas; and

(2) County Criminal Court of Appeals No. 2 of Dallas County, Texas.

Rule 14.1(i)(vi)—Additional Essential Materials

Case Nos. for the 103 complaints

See No. 05-1445, App. A.

Example of the "magistrate warning" and pre-trial Bond.

02/14/2006 11:08 FAX 9727445833 MC JUDGE - RFD JAIL ARRAIGN [p] 001/024

S.O.P.4.04.24-001
2/06

SERVICE # **06-103854**
ID # 221995

STATE OF TEXAS
ARRESTING OFFICER 00798
COUNTY OF DALLAS
DATE OF ARREST **02/13/2006**

I, the undersigned, a judge of the Municipal Court of the City of Richardson, sitting as a magistrate, do hereby certify that:

(NAME) **COLLARD MARY LYNN**
(RACE) **W** (SEX) **F** (AGE) **66** (DATE OF BIRTH) **02/03/1940**
(ADDRESS) **1615 UNVERS1TY** [11] **DR. RICHARDSON** (STATE) **TX**

appeared before me *1000* **(AM)** [12] (PM) on the *14th* day of *February* ,20*06*

---

[11] As such in the original.

[12] This is circled in the original. Bold emphasis used as a substitute.

at the Richardson Police Department, 140 N. Greenville, at the Richardson Municipal Court, 2100 East Campbell Rd., Richardson, Dallas County, Texas, and at the time I warned the above named person of the following accusation against him, to wit:

BUILDING VIOLATION – EXTERIOR PROTECTIVE COAT – CITY – 8200 – MC

wRt # N101355A

and of the affidavit filed in support thereof and gave the following warning:

"YOU HAVE THE RIGHT TO RETAIN LEGAL COUNSEL AND TO HAVE LEGAL COUNSEL PRESENT AND WITH YOU DURING ANY INTERVIEW WITH A PEACE OFFICER OR ATTORNEY REPRESENTING THE STATE. YOU HAVE RIGHT (sic) TO HAVE LEGAL COUNCEL [13] APPOINTED IF YOU ARE AN INDIGENT PERSON UNABLE TO AFFORD LEGAL COUNSEL AND YOUR OFFENSE IS GREATER TIHAN A CLASS C MISDEMEANOR. YOU HAVE THE RIGHT TO REMAIN SILENT, (sic) YOU ARE NOT REQUIRED TO MAKE A STATEMENT. ANY STATEMENT MADE BY YOU CAN BE USED AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO STOP AN INTERVIEW OR QUESTIONING AT ANY TIME. IF YOUR OFFENSE IS A FELONY, YOU HAVE THE RIGHT TO AN EXAMINIG [14] TRAIL. [15] IF YOU ARE A NON-CITIZEN, A CONVICTION OF

---

[13] As such in the original.

[14] As such in the original.

[15] As such in the original.

THIS OFFENSE COULD RESULT IN THE INTERVENTION OF AND YOUR POSSIBLE DEPORTATION BY THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES. [16] IF YOU ARE A NON-CITIZEN, YOU HAVE THE RIGHT TO CONTACT YOUR CONSULAR OFFICIAL – A PROCEDURE FOR THAT PURPOSE WILL BE MADE AVAILABLE TO YOU AT THE CONCLUSION OF THIS ARRAIGNMENT PROCESS."

After being by me duly warned, the above named person is remanded to the custody of the Richardson Police Department and bond set at

$ *~~600~~ ~~250.00~~ 100.00* .

In witness whereof, I hereto subscribed my name:

/s/ R D Noah
Judge of the Municipal Court
City of Richardson, Texas
Magistrate

Plea *NG* Served at $ _____ per 12 hours served:

Fine Amt. $ _____ Commencing on _____, 20____.

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[16] [N.B. "Citizenship and Immigration" used to be just Canadian. Formerly the INS, under DOJ, "Citizenship and Immigration" is a new department under "Homeland Security." *MLC*]